well recognized in England before the adoption of the Amendment,[11] and incorporated in the constitutions of the various states.[12] So, the judicial determination in those jurisdictions of what is reasonable is professedly a declaration of the same law that is embodied in the federal Amendment. Certain exceptions to the broad language of the Supreme Court are well recognized. In the collection of taxes,[13] the regulation of certain businesses,[14] the recovery of stolen goods,[15] and the confiscation of illegal property[16] a search and seizure has been held reasonable though productive of incriminating evidence.[17]

And the principal case affords another example of a search and seizure for the purpose of punishing crime which has never been considered as transgressing the bounds of reasonableness.[18] For it has been recognized that when a person charged with a crime is arrested by a proper warrant,[19] it is reasonable to seize without a warrant property and papers found in his possession at the time of the arrest, for the very purpose of using them as evidence against him.[20] This does not seem to be a confiscatory right, but rather one "derived from the interest which the state has in a person guilty of a crime being brought to justice, and in a prosecution once commenced being determined in due course of law."[21] The seizure must be simultaneous with and growing naturally out of the arrest, but the fact that no search warrant is issued seems immaterial.[22] If, therefore, the *dictum* of the Supreme Court is not read with reference to its particular circumstances, the language may prove, as shown by the principal case, a misleading test of reasonableness.

THE "NET VALUE" OF A LIFE INSURANCE CONTRACT. — On the average, twelve out of every thirteen life insurance policies are surrendered or forfeited for the non-payment of premiums.[1] In case of forfeiture

[11] See Entick *v.* Carrington, *supra*; Money *v.* Leach, 3 Burr. 1742.

[12] The Fourth Amendment is probably not a limitation on the power of the states. Barron *v.* City of Baltimore, 7 Pet. (U. S.) 243. See COOLEY, CONST. LIM., 6 ed., 29. But see Consolidated Rendering Co. *v.* Vermont, 207 U. S. 541, 553.

[13] Stockwell *v.* United States, 3 Cliff. (U. S.) 284.

[14] Joseph *v.* Levin, 128 Mo. 588 (pawnbrokers' books open to inspection).

[15] Houghton *v.* Bachman, 47 Barb. (N. Y.) 388.

[16] State *ex rel.* Milwaukee *v.* Newman, 96 Wis. 258 (gambling apparatus). See Glennon *v.* Britton, 155 Ill. 232, 245. This class of cases seems to be recognized in Boyd *v.* United States, *supra*, 623, 624.

[17] See Spalding *v.* Preston, 21 Vt. 9; State *v.* Robbins, 124 Ind. 308.

[18] See Adams *v.* New York, 192 U. S. 585, 598.

[19] An arrest without a warrant may be reasonable, as where the prisoner was committing or had freshly committed a crime. North *v.* People, 139 Ill. 81.

[20] Rex *v.* Barnett, 3 C. & P. 600; Commonwealth *v.* Dana, 2 Met. (Mass.) 329 (books of seller of lottery tickets); Smith *v.* Jerome, 47 N. Y. Misc. 22.

[21] Dillon *v.* O'Brien, 16 Cox C. C. 245, 249. See Holker *v.* Hennessey, 141 Mo. 527, 539–541.

[22] Since the papers to be seized are sufficiently designated, namely, incriminating evidence found in the prisoner's possession at the time of the arrest, there is no necessity for a search warrant. See cases in notes 20 and 21. A search warrant would not have made the search in the principal case any more reasonable under the language of Boyd *v.* United States, *supra*.

[1] This average is based on 1,525,302 policies in the Mutual, Metropolitan and Prudential Insurance Companies. See BRANDEIS, LIFE INSURANCE, 14.

the insured loses the net value of his policy. Practically all policies contain such a forfeiture clause, and if the premium is not paid when due, the policy is void.[2] This stipulation is held to be a valid condition subsequent [3] and not a mere penalty.[4] To relieve the policy holders against such forfeitures, two types of statutes have been devised. The first has been widely adopted, and merely declares that no policy shall be forfeited unless the insured has been given a written notice that his premium is due.[5] The other is more radical and has been adopted in only a few states.[6] Statutes of the latter type emphatically declare that policies shall not be forfeited for the non-payment of premiums under any circumstances, and provide that three-fourths of the net value of the policy at the time of default shall be used to purchase temporary insurance.[7] These statutes have been held to be mandatory [8] and cannot be waived by the parties.

The operation of these statutes is explained by a recent Missouri case. *Rose* v. *Franklin Life Ins. Co.*, 132 S. W. 613 (Mo.). It points out that the average policy has a level premium which remains the same from year to year while the risk of death steadily increases. In the early years of such policies when the losses are small the premiums are larger than the actual cost of insurance and a reserve is built up to meet the greater losses in the future. From this it is argued that if a loss will not accrue on a particular policy then a proportionate part of the reserve ought to be returned to the policy-holder. But while it is unquestionably true that this reserve should equal the aggregate net values of the outstanding policies, at least three reasons can be shown why each policy is not entitled to its exact *pro ratâ* share. The risks on some policies have increased more than on others. Again, to allow healthy policy-holders to retire and take a numerical proportion of the reserve with them would be to start an "adverse mortality selection" against those remaining. And again, in certain cases premiums are based on the supposition that a certain number of policies will lapse.

While these statutes are thus not justified on the theory that the insurer has a fund which rightfully belongs to the insured, they find ample justification in accomplishing one of the main purposes for which they were passed. For they have effectively eliminated "deferred dividend policies" [9] with their accompanying abuses. The theory of such policies was to form a blind pool where all policies that lapsed were to be forfeited, while at the end of a certain number of years those

[2] Phoenix Life Assur. Co. *v.* Sheridan, 8 H. L. Cas. 745.

[3] New York Life Ins. Co. *v.* Statham, 93 U. S. 24.

[4] St. Louis Mut. Life Ins. Co. *v.* Grigsby, 10 Bush (Ky.) 310.

[5] In England the INDUSTRIAL ASSURANCE COMPANIES ACT, 1896, § 16 applies the rule to industrial companies. In Canada, 60 VICT. c. 36, § 148 gives the insured thirty days' grace in which to pay. In the United States sixteen states have required that there shall be no forfeiture without a notice. See RICHARDS, INSURANCE, 705.

[6] Massachusetts passed the original statute in 1860. MASS. LAWS 1861, c. 186. Missouri copied it in 1879. REV. ST. MO. 1879, § 5983. New York, Colorado, California, Maine, and Michigan have adopted similar ones.

[7] The Missouri statute provides: "The net value of the policy, when the premium becomes due, and is not paid, shall be computed upon the actuaries' or combined experience table of mortality with four per cent interest, per annum."

[8] New York Life Ins. Co. *v.* Cravens, 178 U. S. 389.

[9] See BRANDEIS, LIFE INSURANCE, 20.

that survived were to divide the fund thus collected. Though aimed at these policies, these statutes were held to apply to all policies that had a reserve and so to cover the type in the principal case.[10] This policy was a "preliminary term policy," on which the premiums for the first five years were very low. The plaintiff contended that though the premium was low, the net value was not less and therefore had been sufficient to buy temporary insurance to the insured's death. But the court correctly held that the amount of the reserve was based entirely on the actuarial value; so the policy had lapsed.

THE LIABILITY OF FOREIGN EXECUTORS AND ADMINISTRATORS. — The general principle is well settled that a foreign executor or administrator is not liable in his official capacity, even though he consents to be sued.[1] The language of some cases laying down this rule would indicate that a different one is somehow impossible; but it must be evident there is no more difficulty in recognizing foreign created rights against a representative than against any one else. The underlying reason for the rule appears to be that each state, to guard its own citizens, wished to administer a decedent's property within its bounds, so refused to give it to a foreign representative.[2] After this refusal it felt bound by consistency to decline to hold him. This result is unnecessary, for the right to that property claimed by him and the rights asserted against him are the creations of different laws. In refusing to allow a foreign representative to take domestic property the universal principle of the law of the *situs* determining the title and custody is followed. In declining to allow him to be sued as administrator of the property situated in the jurisdiction of his appointment, the extraordinary doctrine is applied of refusing to recognize and enforce foreign created liabilities. There would be no danger of conflict between the jurisdictions in such an action, for the law of his appointment would always determine the existence and extent of liability.[3] And many states do allow a foreign representative to be sued in cases where such a result is particularly desirable.[4] Thus when he resides in the state of suit or when he there has property of the foreign estate, a suit against him may be maintained.[5] The remedy in some of these cases is to hold the foreign representative as constructive trustee, but the trust must be based ultimately on his liability as administrator. To hold him as executor *de son tort* of the goods he received in the foreign jurisdiction is unsound, for those goods he received rightfully. The exceptional circumstances above mentioned are not everywhere essential to suit against a foreign representative. By statute in a few states a foreign executor or administrator may be sued like any non-resident.[6]

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[10] See Mutual Reserve Life Ins. Co. *v.* Roth, 122 Fed. 853.

[1] Elting *v.* First National Bank, 173 Ill. 368.

[2] See STORY, CONFLICT OF LAWS, § 512.

[3] Hoskins *v.* Sheddon, 70 Ga. 528.

[4] See Courtney *v.* Pradt, 135 Fed. 818, 823,

[5] Colbert *v.* Daniel, 32 Ala. 314; Whittaker *v.* Whittaker, 10 Lea (Tenn.) 93. *Contra*, Hedenberg *v.* Hedenberg, 46 Conn. 30. *Cf.* Falke *v.* Terry, 32 Colo. 85.

[6] GEN. STAT., KANSAS, § 3078.